IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9927 of 2000
TO
SPECIAL CIVIL APPLICATION NO 9931 of 2000

WITH

SPECIAL CIVIL APPLICATION No 9948 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

R D MAKWANA JUNIOR CLERK

Appearance:

1. Special Civil Application No. 9927 of 2000 & others
MR MUKESH A PATEL & MR PD BHATE, AGPs for Petitioner No. 1-5
MR PV HATHI for MISS KHYATI HATHI for Respondents

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 10/03/2004

ORAL COMMON JUDGEMENT

1. This group of six petitions has been filed by the State of Gujarat challenging the decision of the Gujarat Civil Service Tribunal, Gandhinagar, rendered in Appeal No. 11 of 1996 and its connected matters dated 14th February, 2000. By the said common judgment the Tribunal has allowed the appeals of present respondents setting aside the orders impugned in appeals. By the said judgment present respondents have been given the deemed date of promotion on which their juniors were promoted.

1.1. Since these petitions arise from the same judgment, they are heard together and now they are being disposed of by this common judgment.

1.2. The respondents are working on different posts such as Junior Clerk, Typist, Computer Operator, etc. in the office of the Superintending Engineer, Rajkot Irrigation Circle. It appears that in the month of February 1985 the departmental examination was held, which the respondents were required to clear for promotion to the higher post. The examination was held on 23rd and 24th February, 1985 and all the respondents had appeared in the same. However, exigency to make promotions in this circle arose in the month of April 1985. At that time result of the examination held in the month of February 1985 was not declared. It also appears that prior to these dates i.e. 23rd and 24th February, 1985, departmental examination was held, the date of which is not on record. In that examination such Government employees had appeared and passed it also. They were, therefore, considered for promotion on 17th April, 1985. It also appears that there were several employees, who were juniors to present respondents, had also cleared the examination. However, at the time when the promotion came to be granted in the month of April 1985, those persons, namely the juniors of the present respondents, were not included in the list of promotion. The result of the respondents' examination was declared in the month of October 1985 and they had succeeded in it. It further appears that some of the successful candidates of the earlier examination who were left out from the list of promotion, had approached the Tribunal by way of some proceedings and the Tribunal had given certain directions in the year 1992. In view of said directions the State Government sought to reconsider the list of promotion granted in the month of April 1985 to rectify the same by including in it those who had been left out at that time. After due scrutiny and complying

with other formalities the petitioners prepared a list of the candidates who had passed in the earlier examination i.e. as on 17th April, 1985 and they were promoted with deemed date of April 1985. The present respondents had, therefore, at that time made a grievance that they had appeared in the examination which was held in the month of April 1985 and had cleared the same, hence they should also be promoted and given deemed date of promotion. It may be noted here that when the promotions were effected on earlier occasions i.e. in the month of April 1985, no person junior to present respondents was promoted inspite of the fact that many juniors to them had already cleared the examination. It was only in the year 1992 the Government was again required to reconsider the question of promotion of those people and to reconsider by way of rectifying the mistake, which according to them, they had committed at the first instance. Be that as it may. The fact remains that the Government had occasion to examine this issue and to grant promotion to the juniors of the present respondents in the year 1992.

1.3. The respondents, therefore, approached the appropriate authority praying for grant of deemed date of promotion, but their request was turned down vide order dated 14th December, 1995. The respondents, therefore, challenged the said decision in different appeals filed by them before the Gujarat Civil Service Tribunal at Gandhinagar. As already stated, these appeals were decided in favour of the respondents and direction was given to the petitioners to give deemed date of promotion to them on the basis of dates of promotion given to their juniors.

2. Mr. Mukesh A. Patel and Mr. P.D. Bhate, Ld. AGPs appearing for the petitioners have submitted that the entire approach of the Tribunal in dealing with the issue in controversy was erroneous in as much as the petitioners were only rectifying its mistake that had been committed while granting promotion in the month of April 1985 and, therefore, there was no question of considering the cases of the respondents for promotion. They have further submitted that the criteria for promotion was passing of the departmental examination. According to them, as on 17th April, 1985 though the respondents had appeared in the examination, they had not passed the same and, therefore, they did not fulfil the criteria meant for promotion to the higher post. Lastly they have submitted that when the juniors of the respondents had cleared the examination prior in point of time, they were entitled to get promotion ahead of the present respondents. Therefore, their cases and

the cases of the present respondents cannot be equated for the purpose of considering the deemed date of promotion.

2.1. As against that, Mr. P.V. Hathi, learned advocate appearing for the respondents in all the petitions, has submitted that the grievance of the respondents was that if in the year 1992 their juniors for the first time, were sought to be promoted, they should also have been considered for promotion alongwith them since by then they had also cleared the examination. He has further submitted that when in the year 1992 the issue with regard to the promotion for any reason was being reconsidered, it was incumbent upon the petitioners to take into account the seniority of the respondents by virtue of the length of service and they should have been promoted ahead to the juniors who were sought to be included in the rectified list of 1992 with effect from April 1985. He has further submitted that grant of deemed date to the respondents of April 1985 is not likely to cause any prejudice to any one because those who were senior to the respondents were already promoted at that time i.e. April 1985 and the juniors who were left out were also sought to be promoted with effect from 1985. The respondents, therefore, are not likely to adversely affect either the seniors or the juniors. He has also submitted that the candidates were allowed to appear in the examination in batches and the batches were being formed by the petitioners. It is, therefore, quite possible that the person who was not included, though senior to the persons included in the previous batch, would clear the examination at later point of time but his juniors cannot, therefore, still march over his claim. Lastly he has submitted that these petitions have no merit and they deserve to be dismissed.

3. On going through the record of this petition as well as submissions made on behalf of the parties, it clearly appears that the present respondents had appeared in the examination in the month of February 1985 but they were declared passed only in the month of October 1985. The petitioners occasion to give promotion arose in the month of April 1985 and, therefore, the petitioners selected those persons who had already cleared departmental examination that was held prior to February 1985 and had included them in the list of promotion. For some reason or the other, junior candidates, who had appeared in the earlier examination and had cleared it, were left out from such list and their case of promotion had been considered only in the year 1992. The learned counsels for the petitioners are

not able to say whether the departmental examination were being held at regular interval and when such examination was held last prior to February 1985. They have not been able to point out what was the reason that had prevailed with the petitioners not to grant promotions to juniors of present respondents even when they had cleared the examination by 17th April, 1985. They have also not shown whether date of clearing examination would govern the seniority in the same cadre as well as promotional cadre. Thus, the fact remains that the respondents though had appeared in the month of February 1985 and they could have been considered for promotion had the result declared earlier i.e. prior to 17th April 1985, but that was not so. It appears that on account of some urgency the petitioners thought it fit to effect promotions on 17th April, 1985. However, for some reason or the other, the persons who were juniors to the respondents had not been included in the list of promotion and they were only promoted in the year 1992 after the so called rectification of the mistake which the petitioners had committed in April 1985. The respondents by then had become eligible for promotion. The petitioners, therefore, with a view to avoid any conflict or prejudice being caused to any one, could have considered respondents for promotion in the year 1992 and could have granted them deemed date of promotion alongwith their juniors. When the position is so clear in the year 1992 and the respondents have also become eligible for promotion, they were being deprived of the same solely on the ground that as on 17th April, 1985 they were not eligible for the said promotion. It is easy to say that in the year 1992 only the rectification was being made of the Government mistake which had been committed at the time when the first order of promotion was passed i.e. in the month of April 1985, but the same is likely to adversely affect the respondents. When the picture was very clear in the year 1992 with regard to eligibility of the present respondents for being promoted, they should have also been considered for the same. In fact the circular and the language of manual clearly say that a person is deemed to have cleared the examination on the next day of his appearing in the examination. Had the result been declared earlier, there is every possibility that the present respondents might have cleared the examination well in time for being considered for promotion in the month of April 1985 itself. The result was declared as late as 18th October. The respondents, therefore, cannot be penalized for the same. When the rectification was required to be made the petitioners at the same time ought to have seen that no injustice was caused to the respondents who by then had

cleared the examination and they should not have been thrown behind their juniors only because they had appeared in the examination at a later point of time i.e. in the month of February 1985. There is nothing on record to show that the date of passing of the examination is the prime consideration for fixing the seniority of concerned employee in the promotional cadre. When that be so, the correct approach of the petitioners would have been to consider the respondents for promotion and to give them deemed date of promotion of the juniors i.e. 1985. When the Tribunal has adopted this approach, I find no error committed by it and when the substantial justice has been done there is no reason for me to interfere with these petitions under Article 227 of the Constitution of India.

4. The result is that the petitions are dismissed with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.